Supreme Court, U.S.
FILED
JUN 13 2003

No. 02-1680

In The

Supreme Court of the United States

CIGNA CORPORATION, et al.,

Petitioners,

v.

PAUL LEODORI,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of New Jersey

BRIEF OF THE RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

PAUL A. LEODORI
4 Heron Court
Medford, New Jersey 08055
(609) 654-5651

Respondent, Pro Se

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
THIS COURT LACKS JURISDICTION TO GRANT A WRIT OF CERTIORARI	1
THE UNIQUE FACTS FURTHER JUSTIFY DENIAL OF PETITIONERS' PETITION	2
A WRIT SHOULD BE DENIED BECAUSE THE DECISION BELOW ABIDES WITH THE FAA AND WITH DECISIONS OF THIS COURT	5
A WRIT SHOULD BE DENIED BECAUSE NO CONTROVERSY EXISTS IN THE COURTS OVER ARBITRATION AGREEMENTS	6
A WRIT SHOULD BE DENIED SINCE HOLDINGS BY NEW JERSEY COURTS ABIDE BY THE FAA	7
CONCLUSION	8

TABLE OF AUTHORITIES

Page

CASES

Allied-Bruce Terminex Cos. v. Dobson, 513 U.S. 265 (1995) 6

David L. Threlkeld & Co. v. Metallgesellschaft Ltd., 923 F.2d 245 (2d Cir.), *cert. denied*, 501 U.S. 1267 (1991) 6

Doctor's Associates Inc. v. Casarotto, 517 U.S. 681 (1996) 6

Martindale v. Sandvik, Inc., 800 A.2d 872 (2002) 7

Perry v. Thomas, 482 U.S. 483 (1987) 1

Singer v. Commodities Corp (U.S.A.), 678 A.2d 1165 (App. Div. 1996) 7

Young v. Prudential Ins. Co. of America, 688 A.2d 1069 (App. Div.), *certif. denied*, 694 A.2d 193 (1997) 7

STATUTES

Federal Arbitration Act, 9 U.S.C. § 1-16 (2000) ..... *passim*

28 U.S.C. § 1257(a) (1993) 1

MISCELLANEOUS

Restatement (Second) of Contracts 60 (1981) 4

STATEMENT OF THE CASE

The Federal Arbitration Act, 9 U.S.C. § 1-16 (2000) ("FAA") does not apply to this case because the New Jersey Supreme Court held there was no arbitration agreement, written or otherwise, between any Petitioner and Respondent. Petitioner Insurance Company of North America ("INA") merely offered a written agreement to arbitrate that required acceptance by Respondent signing same. However, INA's offer was revoked via e-mail prior to any acceptance and the revoked agreement to arbitrate was never even signed by Respondent.

The record further establishes that there could be no consideration for such an arbitration agreement with Respondent because INA expressly admitted to "removing the link between signing the Handbook receipt and future compensation and benefits actions." Pet., App. at 8a. Since all of Petitioners' arguments are erroneously based upon a fictional arbitration agreement not supported by the record, they all must fail.

THIS COURT LACKS JURISDICTION TO GRANT A WRIT OF CERTIORARI

The "preeminent concern" behind the FAA was to "enforce private [arbitration] agreements into which parties had entered." *Perry v. Thomas*, 482 U.S. 483, 490 (1987). Since the New Jersey Supreme Court found no agreement to arbitrate, the FAA is not applicable and this Court lacks jurisdiction to grant a writ of certiorari pursuant to 28 U.S.C. § 1257(a) (1993).

THE UNIQUE FACTS FURTHER JUSTIFY DENIAL OF PETITIONERS' PETITION

While an employee of Petitioner INA, Respondent was presented in July, 1998 with an employee handbook called "You and CIGNA" which included at page 77 the following proposed agreement. Pet., App. at 6a-7a.

EMPLOYEE HANDBOOK RECEIPT AND AGREEMENT

This is to acknowledge that I have received my copy of the July 1998 employee handbook, You and CIGNA. I understand that by accepting employment and being eligible to receive increases in compensation and benefits, I am agreeing to the following two important terms of my employment described in You and CIGNA: (1) my employment can be terminated by me or my employer at any time for any reason – therefore, my employment is at the will of either party, and (2) I will use the Company's internal and external employment dispute resolution processes to resolve legal claims against the Company – therefore rather than go to court or to a government agency for a hearing to decide my legal claim, I will submit my employment related legal claims except workers' compensation and unemployment compensation to final and binding neutral third party arbitration. I understand further that these two terms of my employment replace and supersede any prior agreement concerning these terms and cannot be changed except in writing signed by me and the president of the Company.

(*The term "the Company" means the particular CIGNA subsidiary or company that employs you.)

Pet., App. at 7a-8a. This proposed agreement required Respondent's signature for acceptance to be effective. Pet., App. at 7a. Respondent never signed this **EMPLOYEE HANDBOOK RECEIPT AND AGREEMENT**. Pet., App. at 18a.

Moreover, the offer of Petitioner INA to arbitrate with Respondent was withdrawn by e-mail on August 17, 1998. Pet., App. at 8a-9a.

> Our recent handling of the **employee Handbook receipt and agreement** process left a lot to be desired. Virtually all aspects of the communications and distribution process that could have gone wrong did – moreover, the process was too complicated and legalistic, and I apologize . . .
>
> Upon reflection, and based upon your feedback, we are removing the link between signing the Handbook receipt and future compensation and benefits . . .
>
> We are proud of the many programs and benefits that are available to all CIGNA employees. And we want everyone in the company to understand that you have your legal rights and more options for resolving employee grievances fairly, quickly and inexpensively than employees in most other companies . . .

Pet., App. at 8a-9a. (emphasis added)

Thereafter, Respondent became an employee of Petitioner, CIGNA Insurance Company, and was never presented with an employment contract or offer to arbitrate while an employee of CIGNA Insurance Company. Pet., App. at 3a. When Respondent's employment with CIGNA Insurance Company was terminated on May 14,

1999, all Petitioners sought to impose arbitration after Respondent asserted various claims against them.

The New Jersey Supreme Court held that INA's withdrawal of the proposed arbitration agreement prior to execution and acceptance by Respondent was fatal to Petitioners' claim that Respondent "knowingly and voluntarily" agreed to arbitration. Pet., App. at 17a.

> Without plaintiff's signature on the **[Employee Handbook Receipt and] Agreement** that accompanied the "You and CIGNA" handbook, we cannot enforce the arbitration provision unless we find some other explicit indication that the employee intended to abide by that provision. No such indication appears in the record.

Pet., App. at 16a. (emphasis added) In so holding, the Court stated:

> Our contract law does not permit [Petitioners] to contemplate or require [Respondent's] signature on an agreement and then successfully to assert that the omission of that signature is irrelevant to the agreement's validity. *Cf. Restatement (Second) of Contracts* 60 (1981) (instructing that offeree must comply with offeror's prescribed manner of acceptance to create contract).

Pet., App. at 18a.

> Absent plaintiff's signature here, we cannot enforce the waiver provisions unless we find some other unmistakable indication that the employee affirmatively had agreed to arbitrate his claims. Finding no such proof, we must hold for plaintiff.

Pet., App. at 18a. Finding no agreement to arbitrate, the New Jersey Supreme Court held the FAA to be inapplicable. Pet., App. at 17a.

In so holding, the Court specifically emphasized the uncontroverted lack of consideration between Petitioners and Respondent necessary to form the basis for an arbitration agreement.

> The e-mail [sent to Respondent] also states on behalf of [Petitioners], "we are removing the link between signing the Handbook receipt and future compensation and benefits actions."

Pet., App. at 16a. This finding by the New Jersey Supreme Court of no consideration further establishes that no contractual agreement to arbitrate did exist or even could have existed between Petitioners and Respondent.

A WRIT SHOULD BE DENIED BECAUSE THE DECISION BELOW ABIDES WITH THE FAA AND WITH DECISIONS OF THIS COURT

Absent "an agreement in writing to submit to arbitration" the FAA is not applicable. 9 U.S.C. § 2; 9 U.S.C. § 3. The New Jersey Supreme Court did not "run afoul of the FAA." Pet., App. at 17a. There is nothing unusual about the New Jersey Supreme Court, or any other court, holding that if an offeror's prescribed manner of accepting a contract is to sign an agreement, there is no agreement if the contract is not signed. Pet., App. at 18a.

A WRIT MUST BE DENIED BECAUSE NO CONTROVERSY EXISTS IN THE COURTS OVER ARBITRATION AGREEMENTS

This Court has spoken often and clearly about the FAA. Petitioners point out in their brief the many decisions which enforce written arbitration agreements. However, all of them are inapplicable in this case given the undisputed absence of an arbitration agreement.

In those cases cited by Petitioners, written agreements to arbitrate were actually accepted by being signed by the parties involved. Challenges to the arbitration provisions in these written arbitration agreements were ultimately unsuccessful because technical, procedural and non-substantive defects were insufficient to overcome the express written agreement to arbitrate mutually entered into by the parties. *Doctor's Associates Inc. v. Casarotto*, 517 U.S. 681, 116 S.Ct. 1652 (1996) (Arbitration agreement initially found technically invalid because Montana statute required that a contract containing arbitration clauses so indicate same in underlined capital letters on the first page); *David L. Threlkeld & Co. v. Metallgesellschaft Ltd.*, 923 F.2d 245 (2d Cir.), *cert. denied*, 501 U.S. 1267, 112 S.Ct. 17 (1991) (Parties did not dispute existence of arbitration agreements and challenges to same were based upon it being a contract of adhesion and contrary to Vermont statute were rejected because "the policy in favor of arbitration is even stronger in the context of international business transactions"); *Allied-Bruce Terminex Cos. v. Dobson*, 513 U.S. 265, 115 S.Ct. 834 (1995) (Party unsuccessfully challenged admitted arbitration agreement on grounds that Alabama statute invalidated predispute arbitration agreements).

Deficiencies inconsistent with the FAA are not why the New Jersey Supreme Court rejected Petitioners' request to arbitrate Respondent's claims. The undisputed absence of an arbitration agreement, not formalistic disqualifiers, are what distinguish this case from those enforcing written and executed arbitration agreements.

A WRIT SHOULD BE DENIED SINCE HOLDINGS BY NEW JERSEY COURTS ABIDE BY THE FAA

Without citing a single case by any New Jersey court, Petitioners argue that "New Jersey" courts have a "jaundiced view of arbitration in the employment context." Incredibly, the support for Petitioner's contention lies exclusively in a footnote about pending legislation.

The reality is that the New Jersey courts have historically and repeatedly enforced arbitration agreements in accordance with the FAA. *Young v. Prudential Ins. Co. of America*, 688 A.2d 1069 (App. Div.), *certif. denied*, 694 A.2d 193 (1997); *Singer v. Commodities Corp (U.S.A.)*, 678 A.2d 1165 (App. Div. 1996). Most recently, in *Martindale v. Sandvik, Inc.*, 800 A.2d 872 (2002) the New Jersey Supreme Court upheld an arbitration agreement.

CONCLUSION

For the foregoing reasons, this Court should deny Petitioners' petition for a writ of certiorari.

Respectfully submitted,

PAUL LEODORI
4 Heron Court
Medford, New Jersey 08055
(609) 654-5651

Respondent, Pro Se